

**FARRIS
MATHEWS
BRANAN
& HELLEN**

PLC

Attorneys at Law

Suite 2400
511 Union Street
Nashville, TN 37219
Phone 615 726-1200
Fax 615 726-1776

Attorneys

William W. Farris
Harlan Mathews
Homer Boyd Branan, III
Tim Wade Hellen
Edwin Dean White, III
Charles B. Welch, Jr.
G. Ray Bratton
John Michael Farris
D. Edward Harvey
Rebecca Pearson Tuttle
Eugene Stoue Forrester, Jr.
Dedrick Brittenum, Jr.
Barry F. White
Robert F. Miller
Robert A. McLean
Anita I. Lotz
Gregory W. O'Neal
Steven C. Brammer
Harold W. Fonville, II
Fred D. (Tony) Thompson, Jr.
Pamela Haddock Klavon
Paul C. Peel
Jon F. Minkoff

Of Counsel

Henry H. Hancock

MEMPHIS DOWNTOWN
Suite 2000
One Commerce Square
Memphis, TN 38103
Phone 901 259-7100
Fax 901 259-7150

MEMPHIS EAST
Suite 400
5384 Poplar Avenue
Memphis, TN 38119
Phone 901 763-4000
Fax 901 763-4095

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OFFICE OF THE
EXECUTIVE SECRETARY

July 30, 1999

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

RE: *Proceeding for the Purpose of Addressing Competitive Effects of
Contract Service Arrangements Filed by BellSouth
Telecommunications Inc. in Tennessee*
Docket No. 98-00559

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Rebuttal Testimony of Carmon Heilmann, Time Warner Telecom of the Mid-South, L.P. in Docket Nos. 98-00559, 99-00210, & 98-00244. Copies are being served on the parties of record.

If you have any questions or concerns with regard to this filing, please do not hesitate to contact me.

Very truly yours,

**FARRIS, MATHEWS, BRANAN
& HELLEN, P.L.C.**

Charles B. Welch, Jr. /kms
Charles B. Welch, Jr.

CBWjr:kms

cc: Carolyn M. Marek
Parties of record

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**REBUTTAL TESTIMONY OF CARMON HEILMANN
TIME WARNER TELECOM OF THE MID-SOUTH, L.P.
BEFORE THE TENNESSEE REGULATORY AUTHORITY
DOCKET 98-00559, 99-00210, & 98-00244
JULY 30, 1999**

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OFFICE OF THE
EXECUTIVE SECRETARY

1 **Q. Please state your full name and business address.**

2
3 **A. My name is Carmon Heilmann. My business address is:**

4
5 65 Germantown Court, Suite 400
6 Cordova, TN 38018
7

8 **Q. By whom are you employed and in what capacity?**

9
10 **A. I am employed by Time Warner Telecom of the Mid-South, L.P. as Director of Sales.**

11
12 **Q. How long have you served as Director of Sales and what are your job**
13 **responsibilities?**

14
15 **A. I have been employed as Director of Sales since accepting employment with Time**
16 **Warner in February of 1998. I am responsible for meeting the revenue and**
17 **customer satisfaction objectives for the Memphis office.**

18
19 **Q. Briefly, describe your work experience.**

20
21 **A. For the past thirteen years, I have been working in the telecommunications industry**
22 **employed in the Memphis area. Prior to my current position with Time Warner, I**
23 **was employed by MCI Communications in various sales, marketing and**
24 **management positions for eight years.**

25
26 **Q. Are you familiar with the telecommunications industry practice of offering**
27 **services to business customers pursuant to the terms of special contracts or**
28 **contract service arrangements?**

29
30 **A. Yes. These contractual arrangements provide an opportunity for large-volume end**
31 **user customers to enjoy lower rates for certain services because the carrier**
32 **providing the services is afforded a certain level of guaranteed revenue for a**
33 **specific term.**

34
35 **Q. What is Time Warner's policy regarding the use of contractual service**
36 **arrangements?**
37

1 **A.** Time Warner encourages the use of contractual service arrangements for
2 appropriate customers and believes that such contracts are essential to the
3 development of facilities-based competition in the local exchange market.
4

5 **Q.** **Please describe Time Warner's efforts to enter the local exchange**
6 **telecommunications service markets as a competing provider.**
7

8 **A.** Time Warner is providing local exchange telecommunications service in 19 markets,
9 including the Memphis market in Tennessee. Time Warner is a fiber, facilities-
10 based integrated communications carrier offering broadband data services, local
11 exchange services, long distance and integrated communications solutions for
12 medium and large business customers.
13

14 **Q.** **When did Time Warner become operational and capable of offering**
15 **telecommunications services in Tennessee?**
16

17 **A.** Time Warner was capable of offering telecommunications services in Tennessee
18 in April of 1997 and began serving its first customer in Tennessee in May of 1997.
19

20 **Q.** **What marketing strategy has Time Warner employed in its effort to enter the**
21 **telecommunications service markets in Tennessee?**
22

23 **A.** As a new competitor trying to establish a market share, Time Warner must be
24 somewhat selective in choosing its service offerings. The type of services and the
25 combination of services Time Warner most efficiently provides are best suited for
26 middle to large size business operations with high usage volumes. Obviously, Time
27 Warner's marketing strategy has been to make these type of business customers
28 a priority.
29

30 **Q.** **What difficulties have BellSouth CSAs presented to the Time Warner**
31 **marketing strategy?**
32

33 **A.** As Time Warner initiated its efforts to enter the Memphis or West Tennessee
34 market, we found that many of the largest and most lucrative business customers
35 were already obligated to long-term contracts of 3 to 5 years to purchase
36 telecommunications services from BellSouth. Most of these customers rejected
37 Time Warner's offer to provide services due to these preexisting obligations which
38 we understand include penalties for early termination.
39

40 **Q.** **In your opinion, how do BellSouth CSAs frustrate the orderly development of**
41 **competition in the telecommunications market in Tennessee?**
42

43 **A.** Competing telecommunications service providers are entering an environment

1 characterized by the overwhelming dominance of the incumbent, monopoly local
2 exchange carrier. In Tennessee, BellSouth has enjoyed for many years a market
3 share of nearly 100%, a ubiquitous network, brand identity and customer loyalty,
4 and control of essential facilities that must be accessed by competitors to begin their
5 efforts in offering services. In order to begin offering services and to compete with
6 the incumbent carriers, competitors must make large investments of time and
7 capital. It has been obvious in the industry for some time that larger business
8 customers are the most profitable and that new carriers must gain a portion of the
9 business customer market to be successful. This is illustrated by the testimony of
10 BellSouth's witness, Randall L. Frame, that less than 1% of BellSouth's business
11 customers pay more than 10% of all business service revenues pursuant to the
12 terms of a CSA.

13
14 If the competing carriers have any advantage in the market place, the advantage
15 is to be capable of providing more technically-advanced services over state-of-the-
16 art facilities at lower prices. After the enactment of state and federal legislation
17 making competition a possibility, but before new companies such as Time Warner
18 became operational, BellSouth approached and was very successful in convincing
19 the most lucrative business customers to enter into long-term contractual service
20 arrangements. Many of these BellSouth contractual arrangements include services
21 such as ESSX® which are inferior in quality as compared to the services offered by
22 competing carriers. When legislation was enacted to permit competing carriers to
23 enter the telecommunications markets, facilities-based competitors faced the task
24 of negotiating interconnection agreements with the incumbent carriers, installing
25 switches and building networks before they could provide services to their first
26 customers. Prior to this time, BellSouth foreclosed the possibility of competitors
27 gaining a share of the most critical portion of the market through the use of CSAs.
28

29 **Q. In his direct testimony, Mr. Frame points out that BellSouth is required to**
30 **allow competitors to resell their CSAs at the avoided cost discount. Does this**
31 **requirement mitigate the adverse impact of BellSouth's CSAs on Time**
32 **Warner's efforts to enter the Tennessee markets?**

33
34 **A.** No. Time Warner is a facilities-based provider and does not resell local
35 telecommunications services. Time Warner made a conscious decision not to
36 expend its resources to compete through the resale alternative as this alternative
37 does not provide adequate opportunity for Time Warner to develop a competitive
38 facilities-based network.

39
40 **Q. What outcome of this proceeding would help Time Warner in its efforts to**
41 **compete in the local exchange market?**

42
43 **A.** The TRA could foster competition by implementing a decision which enables

1 customers to cancel their existing service contracts with the ILEC and avoid
2 exorbitant termination liabilities if the customers elect to purchase services from a
3 competing provider.
4

5 **Q. How would this TRA decision promote competition and benefit customers?**
6

7 **A.** Time Warner maintains that customers cannot take advantage of competitive
8 alternatives because of the burden of termination liabilities, and that a TRA decision
9 as stated above is justified to bring the benefits of competition to consumers. Such
10 a decision will foster facilities-based competition; will bring the benefits of
11 competition to consumers as quickly as possible; and will allow consumers the
12 ability to make choices that were not available to them when they entered into long-
13 term contracts thus promoting competition and the public interest. ILECs would only
14 lose their existing CSA-customers and the associated revenues if they are not
15 competitive in the marketplace. I strongly recommend that the TRA implement such
16 a decision.
17

18 **Q. Does this conclude your testimony?**
19

20 **A.** Yes.
21
22
23
24

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